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THE RULES AGAINST RESTRAINTS ON ALIENATION,
AND AGAINST SUSPENSION OF THE ABSOLUTE
POWER OF ALIENATION IN MINNESOTA¹

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II

THE RULE AGAINST SUSPENSION OF THE ABSOLUTE POWER OF
ALIENATION.

(a) By the Creation of Future Interests in Real Property which
are Not in Trust

THE several kinds of future interests in real property which might have been limited by the American common law² have all been reduced in Minnesota to one common future estate.³ All difficulty and doubt as to the mode of its creation have been removed and the statutory future estate can be created by deed or will as readily as a present estate.⁴ The future estate has been made indestructible by any act of the present tenant.⁵ It can be transmitted, devised, and aliened as freely as an estate in possession whenever the person to whom it is limited is in being and ascertained.⁶ These statutory changes were excellent. They eliminated the hampering influence of the rules of seisin, made the law simple where it had been complex, and modern where it had been medieval. So much cannot be said for the statutory rules which displaced the common law rule against perpetuities.

The statutory rules originated in the Revised Statutes of New York of 1830. These rules and corresponding rules as to trusts hereafter discussed have been substantially in force in New York for more than ninety years, and in Michigan, Wisconsin and Minnesota for more than seventy years.⁷ They have been con-

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¹Continued from 8 MINNESOTA LAW REVIEW 185.

²For the history of the several kinds of future interests see 4 MINNESOTA LAW REVIEW 307-318.

³4 MINNESOTA LAW REVIEW 318-323.

⁴4 MINNESOTA LAW REVIEW 320-321.

⁵Minn., G.S. 1913, sec. 6682.

⁶Minn., G.S. 1913, sec. 6685.

⁷See 3 MINNESOTA LAW REVIEW 320.

strued and applied by the courts particularly in New York in a long line of decisions by no means harmonious. The litigation arising from them in New York greatly exceeds that of England on the same subject matter.⁸ This class of litigation is increasing in Minnesota and will continue to increase with growth of wealth in the state.⁹ The statutes are appended for convenient reference.¹⁰

⁸"In no civilized country is the making of a will so delicate an operation, and so likely to fail of success, as in New York. Before the passage of the revised statutes there seems to have been but one case before the courts in that state in which the remoteness of a limitation was called in issue, and that presented only a simple question of construction. From the passage of the revised statutes down to the publication of the first edition of this treatise in 1886 there had been over one hundred and seventy reported cases on questions of remoteness. During the twenty-eight years since 1886, there have been some three hundred cases more, making a total a little short of, if not over, four hundred and seventy cases. This enormous amount of litigation is perhaps as striking an illustration as could be found of the dangers attending radical legislation." Gray, *Perpetuities*, 3rd Ed., sec. 750. And see *Bogert, Trusts*, 173 note.

⁹See 3 MINNESOTA LAW REVIEW 322.

¹⁰Minn., G.S. 1913, sections:

6664. "Every future estate is void in its creation which suspends the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute fee in possession may be conveyed."

6665. "The absolute power of alienation shall not be suspended, by any limitation or condition whatever, for a longer period than during the continuance of two lives in being at the creation of the estate, except in the single case mentioned in 6666."

6666. "A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain their full age."

6667. "Successive estates for life shall not be limited unless to persons in being at the creation thereof; and, when a remainder is limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto shall be void; and upon the death of those persons the remainder shall take effect in the same manner as if no other life estate had been created."

6668. "No remainder shall be created upon an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder is in fee; nor shall any remainder be created upon such estate in a term of years, unless it is for the whole residue of the term."

6669. "When a remainder is created upon any such life estate, and more than two persons are named as the persons during whose lives the estate shall continue, the remainder shall take effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced."

6670. "A contingent remainder shall not be created on a term of years, unless the nature of the contingency upon which it is limited is such that the remainder must vest in interest during the continuance of not more than two lives in being at the creation of such remainder, or upon the termination thereof."

6671. "No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate."

Definition of Suspension. The main rule is in sections 6664 and 6665. The absolute power of alienation is suspended when there are not persons in being by whom an absolute fee in possession may be conveyed. An absolute fee is a fee that is indefeasible,—not liable to be defeated on a contingency.¹¹ The absolute power of alienation will necessarily be lacking when interests are limited to persons who are not in being or not ascertained. If all those in being and ascertained who have interests united to convey a fee it would be subject to the limitation to those not in being or not ascertained. These executory interests are indestructible by the persons in being.¹² They cannot be released because the persons to whom they are limited are not in being or are unknown.

If A devise land to B, a bachelor, for life, remainder to his first son, there is a suspension of the absolute power of alienation of the fee. A conveyance made by the persons in being, B and A's heirs (to whom the reversion would descend until the remainder vested) would be subject to the interest of the unborn son. There is a suspension of the absolute power of alienation which will continue until the son is born.¹³ It can continue at the longest only during A's life, which is a permitted period.

6673. "All the provisions in this chapter contained relative to future estates shall be construed to apply to limitations of chattels real as well as freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee."

6687. "An accumulation of rents and profits of real estate for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real estate, as follows:

"1. If such accumulation is directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority.

"2. If such accumulation is directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it shall commence within the time in this chapter permitted for the vesting of future estates, and during the minority of the persons for whose benefit it is directed, and shall terminate at the expiration of such minority."

6688. "If, in either of the cases mentioned in 6687, the direction for such accumulation is for a longer time than during the minority of the persons intended to be benefited thereby, it shall be void as to the time beyond such minority; and all directions for the accumulation of rents and profits of real estate, except such as are herein allowed, shall be void."

¹¹"Every estate of inheritance shall continue to be termed a fee simple or fee; and every such estate, when not defeasible or conditional, shall be a fee simple absolute or an absolute fee." Minn., G.S. 1913, sec. 6653.

¹²Minn., G.S. 1913, sec. 6682.

¹³Chaplin, *Suspension of the Power of Alienation*, 2nd Ed., sec. 151; *Cochrane v. Schell*, (1894) 140 N.Y. 516, 539, 35 N.E. 971.

If A devise land to B for life, remainder to B's heirs, there is a suspension of the absolute power of alienation. B's heirs presumptive may release their possibilities but the heirs cannot be ascertained until B's death and others may then be the heirs and entitled.¹⁴ The suspension of the absolute power continues during B's life. It does not of course exceed the suspension allowed. But if the devise be to the person who shall be Governor of Minnesota in 1950 the limitation is void as suspending the absolute power of alienation for too long a period.¹⁵

In these cases the statutory rule has the same effect as the common law rule. It is in the converse of the definition that the difference appears.

The converse is that the power of alienation is not suspended when there are persons in being by whom an absolute fee in possession may be conveyed. If there are persons in being who by joint action can convey an absolute fee in possession the absolute power of alienation is not suspended at all.¹⁶

All future interests to persons in being and ascertained can be released. That they are contingent does not prevent their release unless the contingency is in respect to the persons who will ultimately be entitled to them.¹⁷ There is consequently no suspension if all the interests, vested and contingent, are to persons ascertained.¹⁸

By the common law rule the power to convey an absolute fee must exist without the concurrence of persons having executory

¹⁴Under the statutory definition of "vested" and "contingent" Minn., G.S. 1913, sec. 6683, the remainder to the heirs of the life tenant is held to be vested in the heirs presumptive. See 4 MINNESOTA LAW REVIEW 323-327. But they are divested if they cease to be heirs presumptive. The persons ultimately entitled are those who prove to be A's heirs at his death. While the life tenant lives the heirs presumptive may convey their possibilities, but the alienee's interest is not an absolute fee unless and until the heirs presumptive come to be the heirs in fact. If they are not heirs of A when he dies their alienee has nothing. *Moore v. Littell*, (1869) 41 N.Y. 66, 77, 85; *Taggart v. Murray*, (1873) 53 N.Y. 233; *Kilpatrick v. Barron*, (1891) 125 N.Y. 751, 26 N.E. 925; *Harris v. Strodl*, (1892) 132 N.Y. 392, 30 N.E. 962; *Downey v. Seib*, (1906) 185 N.Y. 427, 78 N.E. 66, 8 L.R.A. (N.S.) 49, 113 A.S.R. 926. *Chaplin, Suspension of the Power of Alienation*, 2nd Ed., sec. 151.

¹⁵*Chaplin, Suspension of the Power of Alienation*, 2nd Ed., sec. 158.

¹⁶*Mineral Land Investment Co. v. Bishop Iron Co.*, (1916) 134 Minn. 412, 159 N.W. 966; *Graham v. Graham*, (1905) 49 Misc. 4, 97 N.Y.S. 779; *Thieler v. Rayner*, (1906) 115 App. Div. 626, 100 N.Y.S. 993, affirmed (1908) 190 N.Y. 546, 83 N.E. 1133.

¹⁷Minn., G.S. 1913, sec. 6685; 1 *Tiffany, Real Property*, 3rd Ed., 525, 526, 589.

¹⁸*Beardsley v. Hotchkiss*, (1884) 96 N.Y. 201, 214.

interests. Every executory interest disables the persons having the present estates in the property subject to the interest from conveying an absolute fee. Every executory interest consequently suspends the power so long as it continues executory. Only when it vests is the power restored. And the power is then in the person in whom the fee vests. There is a suspension of the absolute power of alienation so long as the future interest remains contingent or executory.¹⁹

A devises land to B in fee simple and further provides that if C or his heirs ever pay B or his heirs \$1000 the land shall go to C and his heirs. C has a conditional limitation.²⁰ It is a descendible interest²¹ which may last forever. But it is alienable by C or, after C's death, by his heirs.²² B and C are persons in being and they can by joint action at any time convey an absolute fee simple in possession. There is consequently no suspension of the absolute power of alienation as defined by the statute. So the limitation to C is valid in Minnesota.²³

But by the common law rule the power to convey an absolute fee must exist without C's concurrence. There is consequently a suspension of the absolute power of alienation according to the common law rule.²⁴ And as this suspension might last forever the limitation to C is void in its creation and B has a fee simple absolute.

Under the statutory rule it is not necessary that the persons who will ultimately be entitled to the future interests be individually ascertained. It is enough that all persons who can possibly take under the limitation are in being and the group ascertained. Each member of the group can release his possibility and all together can convey an absolute fee.²⁵ The common law rule

¹⁹See *The Rationale of The Rule Against Perpetuities*, 6 MINNESOTA LAW REVIEW 564 et seq.

²⁰Minn., G.S. 1913, sec. 6667.

²¹Minn., G.S. 1913, sec. 6685; 1 Tiffany, *Real Property*, 3rd Ed., 589.

²²Minn., G.S. 1913, sec. 6685.

²³*Mineral Land Investment Co. v. Bishop Iron Co.*, (1916) 134 Minn. 412, 159 N.W. 966; *Chaplin, Suspension of the Power of Alienation*, 2nd Ed., sec. 154; *Mott v. Ackerman*, (1883) 92 N.Y. 539, 550; *Murphey v. Whitney*, (1894) 140 N.Y. 541, 546, 35 N.E. 930. But the recent cases in New York hold that executory interests are void for remoteness in vesting even if they are alienable, see post note 30.

²⁴*Gray, Perpetuities*, 3rd Ed., sec. 269; *Brattle Square Church v. Grant*, (1855) 3 Gray (Mass.) 142; *Winsor v. Mills*, (1892) 157 Mass. 362, 32 N.E. 352.

²⁵*Chaplin, Suspension of the Power of Alienation*, 2nd Ed., secs. 39, 151; *Mott v. Ackerman*, (1883) 92 N.Y. 539, 550; *Beardsley v. Hotchkiss*, (1884) 96 N.Y. 201, 214.

requires that each person be definitely ascertained. Only such persons can convey an absolute fee without the concurrence of others.²⁶ Only individually ascertained persons have vested interests.

Suppose A devises real property to B for life, remainder to those of B's children who attain twenty-five years of age. This is a contingent remainder to the children. The devise will include all the children B ever has who attain twenty-five. The maximum number of possible devisees cannot be known until B's death. There is consequently a suspension of the absolute power of alienation during B's life. The maximum number is known at B's death. Suppose B leaves one child C, twenty-five and one D, one year of age: Does the suspension continue? The whole property would be vested in C but subject to open up to let in D if he later attained twenty-five.²⁷ But C and D jointly could convey an absolute fee in possession and there would be no suspension under the statutory rules after B's death.²⁸ If the remainder were to those of B's children who attain seventy, the result would be the same. The gift to the children would suspend the power of alienation only for B's life. It would be valid in either case.

But B alone could not convey an absolute fee (it would pass subject to D's possibility) without the concurrence of D who has the executory interest. So there would continue to be a suspension of power under the common law rule. The suspension might continue twenty-three years (in the second case sixty-nine years) after B's death. The gift to the children would be void in its creation under the common law rule.²⁹

There is no suspension of the absolute power of alienation in the statutory sense when all the possible interests are to persons in being and ascertained as a group although the interests are contingent.³⁰ There is a suspension in the common law sense because of the contingency alone.

²⁶Gray, *Perpetuities*, 3rd Ed., sec. 269 et seq.

²⁷Tiffany, *Real Property*, 2nd Ed., 498, 581; Minn., G.S. 1913, sec. 6684.

²⁸"The statute is aimed only at the suspension of the power of alienation by the terms of the instrument and not such as necessarily arises from the disability of infancy, or from other causes outside the instrument." Per Earl J. in *Beardsley v. Hotchkiss*, (1884) 96 N.Y. 201, 214.

²⁹Gray, *Perpetuities*, 3rd Ed., sec. 277. In *Re Hargreaves*, L. R. 43 Ch. D. 401; In *Re Ashforth*, [1905] 1 Ch. 535.

³⁰This discussion is based on the assumption that the dictum in *Buck v. Walker*. (1912) 115 Minn. 239, 132 N.W. 205, Ann. Cas. 1912D 882,

It is because of this difference that perpetual options on land are valid in Minnesota³¹ but void under the common law rule

and the decision in *Mineral Land Improvement Co. v. Bishop Iron Co.*, (1916) 134 Minn. 412, 159 N.W. 966, that the statutes require only a power of alienation by joint action are correct. Sections 6663 and 6664 considered apart appear to justify this conclusion. But other sections of the statutes, the notes of the New York revisors, and recent decisions in New York raise great doubt whether more is not required.

The exceptional case provided for in section 6666 requires that the remainder *take effect*, the natural meaning of which is to vest in possession or at least in interest,—very inapt words to require mere alienability. Again in sections 6667 and 6669 the remainder is required to *take effect*. In section 6670 the remainder is required to *vest in interest*. In section 6673 *absolute ownership* is required. It may be said that these sections are applicable only to special cases. But this can scarcely be said of section 6687(2) which requires accumulations to commence *within the time in this Chapter permitted for the vesting of future estates*. This reference seems to be to the general rule.

The New York revisors in the notes appended to their draft of the sections under consideration, said:

"Notwithstanding the abolition of estates tail, our law allows certain executory dispositions of land, or the profits of land, by which the former *may be rendered inalienable*, and the latter may be made to accumulate, for a life or lives in being, and twenty-one years thereafter. . . . Not to give a greater perpetuity to a disposition by executory devise, than the possible limits of an entail, the courts held that no executory devise could be good, unless it *must necessarily take effect* within a life or lives in being, or twenty-one years thereafter.

"When our legislature abolished entails, they left the common law in regard to executory limitations, unaltered. Indeed land *may be rendered inalienable* for a longer period by springing use, or executory devise, than by an entail.

"The revisors have proposed some new regulations on this subject, which will considerably abridge the present *power of rendering real estate inalienable*."

"To prevent a possible difficulty in the minds of those to whom the subject is not familiar, we may also add, that *an estate is never inalienable unless there is a contingent remainder, and the contingency has not yet occurred*. Where the remainder is vested, as where the lands are given to A for life, remainder to B (a person then in being) in fee, *there is no suspense of the power of alienation*; for the remainderman and the owner of the prior estate, by uniting, may always convey the whole estate. *This is the meaning of the rule of law prohibiting perpetuities, and is the effect of the definition in sec. 14.*" (Minn., G.S. 1913 sec. 6664.)

Learned writers have long debated whether the revisors intended to require vesting of future interests or alienability by joint action within the period allowed. See Chaplin, *Suspension of the Power of Alienation*, 2nd Ed., ch. VI; Fowler, *Real Property*, 3rd Ed., 261 et seq.; Reeves, *Real Property*, sec. 958; Canfield, *The New York Revised Statutes and The Rule Against Perpetuities*, 1 Col. L. Rev. 224. The fact is that the revisors did not distinguish between the two requirements. They recognized that the common law rule was that an executory devise to be valid must be one that "*must necessarily take effect*" within the period allowed. Again they speak repeatedly of rendering land "*inalienable*" by such future interests. The key is found in the last quotation. They stated truly that an estate is never inalienable unless there is a contingent remainder. They then point out that when the remainder is vested it is always alienable and thought they had covered the whole ground. They put contingent and inalienable together on one side, and vested and alienable together on the other. It never occurred to them that contingent

against perpetuities.³² It is startling to suggest that a devise to B in fee with a conditional limitation over to C in fee in case

estates are alienable, or at least releasable, when they are to persons ascertained. Consequently in drafting their rules they express some of them in terms of alienability, and others in terms of vesting, believing that each term expressed the same idea. The vested remainderman, they point out, may be uniting with the owner of the prior estate convey the whole estate, and this is the meaning, they add, of the rule prohibiting perpetuities and is the effect of their definition. Little wonder that there has been dispute as to which they meant, since they thought the two ideas were the same idea.

The revisors' failure to distinguish between the two ideas is not surprising, when we remember that the distinction had never been made or suggested in a decided case before they prepared their revision. There had been cases in which it might have been made, but it had not even been suggested. (6 MINNESOTA LAW REVIEW 570-572). The cases said that land must be alienable within a certain period, assuming, without saying, that it must be alienable by a tenant or cotenants without the concurrence of those having future contingent interests. (6 MINNESOTA LAW REVIEW 569-70). The commentators of the period were scarcely more explicit (see discussion and authorities quoted, Chaplin, *Restraints on Alienation*, 2nd Ed., sec. 300 et seq.). Mr. Chaplin thinks that the revisors consciously decided to require mere alienability for some classes of interests, and alienability by vesting for other classes. But with submission, they simply did not distinguish between the idea of alienability and vesting, but on the contrary treated them as identical. And this is the result finally arrived at by the decisions of the New York courts.

After oscillating for a long time (cf. *Henderson v. Henderson*, (1889) 113 N.Y. 1, 20 N.E. 814 and *Sawyer v. Cubby*, (1895) 146 N.Y. 192, 40 N.E. 869) between the requirement of alienability by joint action, and vesting, the New York court of appeals in *The Matter of Wilcox*, (1909) 194 N.Y. 288, 87 N.E. 497, decided that remainders must vest within the period allowed. See 9 Col. L. Rev. 338. This decision was in part based on a clause not found in the Minnesota statutes. The New York revised statutes, (Section 6674 of the Minnesota Statutes) has this additional clause: "A remainder of a freehold or chattel real, either vested or contingent, may be created expectant on the determination of a term of years; and a fee may be limited on a fee, upon a contingency, which, if it should occur, *must happen within the period prescribed in this article.*" This is the only clause of the New York revised statutes bearing on the topic under discussion not copied into the Minnesota statutes. This clause applies only to "remainders" and it was still in doubt whether future interests not remainders (Minn. G.S. 1913, sec. 6661; 4 MINNESOTA LAW REVIEW 322) were required to vest. This has been decided in *Walker v. Marcellus & Otisco Lake Railway Co.*, (1919) 226 N.Y. 347, 123 N.E. 736, in which it is held that a future interest which is not a remainder (a springing use at common law) is void if it might continue executory beyond the period allowed. The New York law today appears to be that all future interests are subject to the requirement of vesting. The result is curious indeed because it renders the separate requirement of alienability entirely useless, as applied to future interests not in trust since every vested interest is alienable.

Is it certain that the Minnesota statutes do not require vesting? It took ninety years of litigation to decide the question in New York. It would certainly be wise to make the statutes express the desired object clearly and avoid like uncertainty and litigation in this state.

³¹*Mineral Land Investment Co. v. Bishop Iron Co.*, (1916) 134 Minn. 412, 159 N.W. 966. The option was for fifty years, but for the same reason, a perpetual option is valid. Such options, if valid, are specifically enforceable in equity. Consequently they are in effect executory equitable limitations of the property.

B's issue ever fails is valid in this state. Such a limitation creates much of the inconvenience of the old estate tail now abolished, since no one would buy the land of B without a release by C or his heirs and that may be very difficult to procure, especially after the descent of C's interest for several generations.

The common law rule is better. It is a practical rule. It does not look so much at the theoretical possibility that the persons with successive interests may join in a conveyance as at the practical probability that they will not. The contingencies upon which executory limitations may be made operative are without number. It would be difficult to agree on the value of the executory interest. The difficulty of getting life tenants and remaindermen to unite in a conveyance is well known. There is greater difficulty here. There is nothing to correspond to tables of mortality as in the case of life interests. The executory devisee can use his comparatively valueless interest as a club over the present tenant. True the fee may be aliened without a release but it would continue subject in the hands of the alienee to the executory interest.³³ This interest is indestructible by an act on the part of the present tenant. Purchasers can not be found for such defective titles.

The common law rule is better in another respect. Society has an interest besides free trade in land. The object of alienability is that land may be improved and put to the best use. Little improvement can be expected of land which is subject to executory limitations such as a perpetual option exercisable at any time perhaps at a fixed price.³⁴

³²Gray, *Perpetuities*, 3rd Ed., sec. 275; *Winsor v. Mills*, (1892) 157 Mass. 362, 32 N.E. 352; *Turner v. Peacock*, (Ga. 1922) 113 S.E. 585.

³³"If there is a gift over of an estate on a remote contingency, the market value of the interest of the present owner will be greatly reduced, while the executory gift will sell for very little, or, in other words, the value of the present interest *plus* the value of the executory gift will fall far short of what would be the value of the property if there were no executory interest. Further, if the owner of the present interest wishes to convey an absolute fee the holder of the executory gift can extort from him a price which greatly exceeds what it ought to be, if based on the chance of his succeeding to the property." Gray, *Perpetuities*, 3rd Ed., sec. 268.

³⁴"And again, just as it has been for centuries the policy of our law to allow a man full power of disposition of his property, under the belief that thereby the activity of the owner will be increased and the public benefited, so it is against public policy to allow such activity to be diminished by the fear of losing the property on a future contingency; and while near future interests may be desirable modifications of ownership, remotely contingent interests are likely to diminish the activity in ownership to an extent greater than any advantages which will follow from allowing them.

The courts of New York have returned to the common law rule. The Minnesota rule is no longer adhered to in the state of its origin.³⁵

The Rule and its Operation.—Every future estate is void in its creation which might suspend the absolute power of alienation for a longer period than during the continuance of two lives in being at its creation.³⁶

An estate is created by grant on the delivery of the deed, and by devise on the death of the devisor.³⁷ Considered from that point of time, a limitation that might continue to exist unreleasable for more than some two lives in being at its creation is void. It is enough that it may continue unreleasable. It is not necessary that it must. To sustain the validity of the estate it must be possible to prove with reference to the circumstances existing at the time of its creation that it can by no possibility continue to exist unreleasable beyond the period allowed. If it can be shown that it must either cease to exist as a possibility or become releasable within the period allowed it is valid. Hence it is necessary to show that the persons to whom it is limited will be in being and ascertained at least as a group within the period, or that they cannot come into being beyond that period.³⁸ The examples already given are sufficient illustrations. It operates in the same manner as the common law rule.³⁹

The Period of Suspension Allowed.—The period of suspension permitted is the same whether it arise from the creation of future interests or of trusts. Except in the single case mentioned in section 6666, the period of suspension allowed is the continuance of two lives in being at the creation of the estate. Two lives in being is the maximum period. If estates are limited to A, B and C as joint tenants for life, remainder to their children who survive all of them, the remainder is void, because the

To put it in other words, it is desirable that a man's motives to make the most of his property should not be diminished by the danger of losing it on a future contingency; on the other hand each generation should have the power of providing for those who come immediately after it in the way it thinks best by limiting the interests given them; and the Rule against Perpetuities, as extended, is the line which the law has laid down so as to give both these desirable objects a reasonable field without encroaching on the other." Gray, *Perpetuities*, 3rd Ed., sec. 268.

³⁵Note 30 ante.

³⁶Minn., G.S. 1913, sec. 6664, 6665, note 10.

³⁷Minn., G.S. 1913, sec. 6691.

³⁸Chaplin, *Suspension of the Power of Alienation*, 2nd Ed., secs. 94, 95; Reeves, *Real Property*, sec. 961; Fowler, *Real Property*, 3rd Ed., 315.

³⁹Gray, *Perpetuities*, 3rd Ed., sec. 214.

children would not necessarily be ascertained until the termination of three lives.⁴⁰ So suspension during the life of a person unborn at the creation of the estate is not permitted. Or suspension during the minorities of three or more minors;⁴¹ or until some one of three or more minors actually comes of age. The two lives in being must be designated expressly or by implication because it would otherwise be impossible to show that the suspension could not exceed two lives.⁴² Suspension during a term of years no matter how short is not allowed.⁴³ Nor can there be suspension to a fixed future date.

The period is extended in one case.

"A contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the prior remainder is limited die under the age of twenty-one years, or upon any other contingency by which the estate of such persons may be determined before they attain their full age."⁴⁴

In another place⁴⁵ it is pointed out that this section seems out of harmony with the general rule. "To take effect" means *to vest* rather than *to become alienable*; but to harmonize it with the general rule these words must be read in the latter sense.

Reading the section as an extension of the period during which suspension may continue, it does not for most cases extend the permitted period of suspension at all. If the limitations are such that within the period of two lives in being all possible remaindermen must be in being and ascertained as a group there is no suspension in the statutory sense beyond the two lives. If the limitations are to A, a bachelor, for life, remainder to his first son, and if that son dies under twenty-one, remainder to his second son, etc., all the possible remaindermen will be in being at A's death. Since they can then unite in conveying the fee suspension will be at an end within the period allowed by the general rule. The exception is unnecessary to such cases.⁴⁶

⁴⁰Chaplin, *Suspension of the Power of Alienation*, 2nd Ed., sec. 76.

⁴¹*Simpson v. Cook*, (1877) 24 Minn. 180.

⁴²*Simpson v. Cook*, (1877) 24 Minn. 180.

⁴³*Simpson v. Cook*, (1877) 24 Minn. 180.

⁴⁴Minn., G.S. 1913, sec. 6666.

⁴⁵Note 30 ante.

⁴⁶This fact was not appreciated by the New York revisors. In their notes on this section they say: "It may be useful to illustrate by examples, the effect of [section 6666] as its meaning may not be immediately obvious. Suppose an estate devised to *A for life, and upon his death to his issue then living; but in case such issue shall die, under the age of twenty-one years, or in case such issue shall die under the age of twenty-one*

It is only in cases in which some of the remaindermen might not be ascertained within two lives that the exception is helpful. This situation might arise in two ways.

The first remainder might be limited after not more than two lives, but be to a person not necessarily in being at their termination, as to A and B as joint tenants for life, remainder to their first born grandchild and if this grandchild die at any time under twenty-one, then to the next born grandchild. The first remainderman might be born any time up to the death of all the children of A and B, and so might not be ascertained within lives in being. The remainder might suspend the absolute power of alienation, during the lives of persons not in being at its creation (children of A and B) and a further minority. The exception does not permit of this remainder according to the New York cases.⁴⁷

The first remainder might be limited after not more than two lives in being and be to a minor in being at their termination, with a remainder over on his death under twenty-one, to a person not in being on the termination of the two lives, but in being on the death of the minor, as to A and B jointly for life, remainder to their eldest child living at their death and if that child die under twenty-one leaving children, remainder to these children. In this case the first remainderman may be a minor, but he is ascertained on the death of A and B. The ultimate remaindermen might be born after the deaths of A and B but will necessarily be in being on the death of the minor. The absolute power of alienation might be suspended for two lives in being and a minority, but no longer. The ultimate remainder would be void under the general rule but it is saved by the exception. This seems to be the whole function of the exception.⁴⁸

years and without lawful issue, then to B in fee. Here, in both cases, the remainder to B would be valid as embraced by the terms of the section." But by the same token it would be valid by the terms of the general rule. The only interests limited are to the issue of A ascertained at his death, and to B presumably a living person. They could all unite in a conveyance on A's death. Suspension would be only for A's life. Disability to convey arising from infancy is not within the rule. Note 28 ante. But perhaps the revisors were thinking of suspension of vesting (note 30 ante) in which case their example would be apt.

⁴⁷Chaplin, *Restraints on Alienation*, 2nd Ed., sec. 89 citing cases; Fowler, *Real Property*, 3rd Ed., 305.

⁴⁸"During all the period since the enactment of the Revised Statutes, it seems to have been uniformly regarded by the courts as settled, that the period extending through two lives and until the majority or early death of one infant, furnished, when understood as including allowance for periods of gestation, the extreme maximum of the authorized term."

Another limitation over in case the second remainderman die under twenty-one is invalid.⁴⁹

The restriction of the period to two lives in being and an actual minority has been one of the most fertile causes of litigation and of the failure of future interests and trusts. The common law rule allows a suspension during any number of lives in being and twenty-one years. This period was fixed by the courts in a long series of cases decided through two hundred and fifty years. It is the result of experience. Its boundaries are wide enough to admit of all the provisions which testators usually find desirable in disposing of their property. As stated by Gray:⁵⁰

"A will drawn as testators usually wish their wills drawn does not violate the [common law] rule. The limit of lives in being is a natural limit. The rule strikes down only unusual provisions. But the limit of two lives, fixed by the New York statutes, is an arbitrary limit. It cuts through, and defeats the most ordinary provisions. To allow future estates, and yet to confine them within bounds so purely arbitrary would seem to be an invitation to litigation, and so the event has proved."

The period of lives in being produces no inconvenience. In the words of an early English case⁵¹ the candles are all lighted at once so that the suspension is after all only for the duration of the longest life. The majority of states which have copied from the New York statutes have not restricted the lives to two.⁵² In New York,⁵³ Michigan,⁵⁴ Wisconsin,⁵⁵ Minne-

Chaplin, *Suspension, Alienation*, 2nd Ed., 52, and cases cited; Fowler, *Real Property Law*, 3rd Ed., 305-309.

⁴⁹*Temple v. Hawley*, (1843) 1 Sandf. Ch. (N.Y.) 153, 177.

⁵⁰*Perpetuities*, 3rd Ed., sec. 749.

⁵¹*Love v. Windham*, (1671) 1 Sid. 450, 1 Lev. 290, 2 Chan. Rep. 14.

⁵²Cal., Civil Code, secs. 715, 772 (Lives in being and a minority); District of Columbia, Torbert's Code 1919, sec. 1023 (Lives in being and twenty-one years);

Idaho, 1 Rev. Codes, secs. 3067, 3072 (Lives in being and a minority);

Indiana, 2 Burns Ann. Stat. sec. 3998 (Lives in being and a minority);

Iowa, Code of 1897, sec. 2901 (Lives in being and twenty-one years);

Kentucky, Stat. 1909, sec. 2360 (Lives in being and twenty-one years and ten months);

Montana, Rev. Codes, secs. 4463, 4492 (Lives in being and a minority);

North Dakota, Compiled Laws, 1913, secs. 5287, 5315 (Lives in being and a minority);

Oklahoma, Rev. Laws 1910, secs. 6605, 6608, (Lives in being and a minority);

South Dakota, Comp. Laws, 1910, secs. 224, 252 (Lives in being and a minority).

⁵³Consol. Laws, Ch. 50, sec. 42. (Two lives in being and a minority).

⁵⁴Mich., C.L. 1915, secs. 11532, 11533 (Two lives in being and a minority). These sections were taken verbatim from New York Revised Statutes. A strong argument for extending the period to any number of

sota,⁵⁶ and Arizona⁵⁷ the number of lives is so limited. It should further be noted here that the period for continuance of certain trusts in Minnesota was in 1897 fixed at any number of lives in being and twenty-one years.⁵⁸

There may be greater doubt as to the wisdom of including the term in gross of twenty-one years. It became incorporated into the common law rule largely by the authority of dicta and text writers,⁵⁹ but it is now firmly established. The majority of the states which have legislative rules, influenced by the New York statutes enacted before the common law rule was clearly settled⁶⁰ have not included the term in gross within the period allowed.⁶¹ Following these statutes they have provided only for a minority existing when the lives terminate, which is an approximation to the earlier common law rule.⁶² Learned writers contend that the period should not exceed lives in being and minorities.⁶³

But the weight of the argument is in favor of including the term in gross. The common law rule includes it, and this rule still prevails in the great majority of states. It has been allowed in several states that have legislated on the matter.⁶⁴ Wisconsin which at first omitted it, has since included it.⁶⁵ It is part of the period allowed for the continuance of certain trusts of real

lives in being is made by Prof. Edwin C. Goddard in 22 Mich. L. Rev. 95, 105.

⁵⁵Stat. 1898, secs. 2038, 2039 (Two lives in being and twenty-one years). These sections were taken over from Michigan and were originally the same, but were amended in 1887 to add the twenty-one year period.

⁵⁶These Minnesota sections came from and are the same as the original Wisconsin.

⁵⁷1913 Rev. Stat. Civil Code secs. 4679-81 (two lives in being and twenty-one years). Copied from the Wisconsin statute as amended, note 55.

⁵⁸Minn., Laws 1897, Ch. 145; now incorporated in Minn., G.S. 1913, sec. 6710(6).

⁵⁹Cadell v. Palmer, (1833) 1 C. & F. 372; Gray, Perpetuities, 3rd Ed. secs. 171-188, 223, 224.

⁶⁰But the New York revisors recognized the common law period as lives in being and twenty-one years. In their notes they say that "our law allows certain executory dispositions of land and the profits of land, by which the former may be rendered inalienable, and the latter may be made to accumulate for a life or lives in being, and twenty-one years thereafter." It had been so recognized by Judge Story in *Barnitz v. Casey*, (1813) 7 Cranch (U.S.) 456, 469, 3 L.Ed. 403. The revisors wittingly rejected the term in gross.

⁶¹Notes 52-57 ante.

⁶²Gray, Perpetuities, 3rd Ed., secs. 171 et seq.

⁶³Gray, Perpetuities, 3rd Ed., secs. 187, 188; Goddard, Perpetuity Statutes, 22 Mich. L. Rev. 95, 105.

⁶⁴Notes 52-57 ante.

⁶⁵Note 55 ante.

property in Minnesota.⁶⁶ Uniformity of rule in the several states is highly desirable in a matter affecting the validity of trusts and wills. It is also desirable to have the same rule for several matters of a similar nature within the same state.

There is no greater inconvenience from a suspension occasioned by a term in gross than by a minority. The term in gross permits a greater variety of modes of expression in wills than the period expressed in minorities. Testators unskilled in the law, indeed lawyers skilled in the law as the cases show, intending to provide for contingencies during minorities sometimes express them in terms of fixed years or dates. Such provisions are invalid under a rule restricted to minorities. The rule should be so framed as to give the widest latitude to testators in their dispositions and in the mode of expressing them which is consistent with public policy. Of course the term in gross may, if allowed, be used for dispositions having no relation to minorities. But the desire to abuse it is rare, and its occasional abuse is outweighed by its advantages. The period of lives in being and twenty-one years has been found satisfactory by experience.

If the period is to be restricted to lives in being and minorities the exception in section 6666 should be restated. It now covers only unusual cases and does not provide for others equally permissible. If the rule were made to require vesting within the period allowed the term in gross would become almost indispensable.⁶⁷ Suppose land were devised to A, a bachelor, for life, remainder to B in fee, but if A marry and have children to the first child of A who attains twenty-one. The devise over might remain unvested for a life in being and twenty-one years. It would be void under a rule restricting the period for vesting to lives in being. And it would not be saved by the exception because the first remainder is not to a minor as is necessary to make the exception applicable.

If the term of twenty-one years is not allowed in addition to the lives in being it should at least be permitted as an alternative period. No good reason can be given for allowing suspension for two lives or for any number of lives and prohibiting it for five years.⁶⁸ It is a needless trap for the unwary testator.

⁶⁶Minn., G.S. 1913, sec. 6710(6).

⁶⁷This is the present situation in New York, (see note 30 ante) as pointed out by Judge Fowler, in Fowler, *Real Property*, 3rd Ed. 289.

⁶⁸*Rong v. Haller*, (1909) 109 Minn. 191, 123 N.W. 471, 806.

SUPPLEMENTARY RULES RESTRICTING THE NUMBER OF LIFE
ESTATES, ACCELERATING REMAINDERS AND PROHIBITING
REMOTE REMAINDERS AFTER TERMS FOR YEARS
IN REAL PROPERTY NOT IN TRUST

"Successive estates for life shall not be limited unless to persons in being at the creation thereof; and, when a remainder is limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto shall be void; and upon the death of those persons the remainder shall take effect in the same manner as if no other life estate had been created."⁶⁹

At common law any number of successive estates for life could be limited to persons in being or, subject to one qualification,⁷⁰ to persons not in being, with or without an ultimate remainder in fee, provided that the estate could not remain contingent beyond the period allowed. Two cases will illustrate the operation of the statute.⁷¹

In *Graham v. Graham*⁷² there was a devise in effect to three unmarried daughters as tenants in common for life with cross-remainders for life, remainder in fee to them and two other children of testatrix. It was held that on the death of one her undivided third goes equally to the other two. When a second dies her original third goes to the third daughter. But the sixth part derived from the first to die, cannot go over to the third daughter because there have already been two life estates in it and the statute forbids another. So this sixth will then vest in possession in the remaindermen. The surviving daughter still holds five-sixths,—her original third, the sixth derived from the first who died, and the original third of the second daughter who died.

In *Purdy v. Hayt*⁷³ there was a devise in effect to J and C, as tenants in common for their respective lives, with cross re-

⁶⁹Minn., G.S. 1913, sec. 6668.

⁷⁰After a life estate to an unborn person, a remainder could not be given to his issue. Williams, Real Property, 23rd Ed., 446.

⁷¹Read literally, this section does not prevent one life estate to a person not in being. Only successive life estates to persons not in being are prohibited. Neither does it restrict literally the number of life estates to persons in being, except when a remainder (this must mean in fee) is limited after them. But its literal meaning is evidently not its legal meaning. The New York revisors' notes state that no more than two successive life estates can be created. And see *Purdy v. Hayt*, (1883) 92 N.Y. 446.

⁷²(1905) 49 Misc. 4, 97 N.Y.S. 779.

⁷³(1883) 92 N.Y. 446.

mainders for life, remainder to E for life, remainder in fee to the children of E who survive her. J died first, then C died. E survived and had two children living. It was held that on J's death, her half went to C for life, and upon C's death the limit of the statute as to that half was reached, and the life estate to E in that half, being a third life estate, was void. The remainder to the children of E being contingent could not be accelerated, and so was void as to that half, and the property went to the heirs of the testator. As to C's original half, the life estate of E was valid, being only the second life estate in it, and likewise the remainder in fee to the children of E was valid as to this half.

These cases show that the section prohibits more than two successive life estates to persons in being. All life estates subsequent to those of the two persons first entitled are void. The estates may be created in such terms that the two persons first entitled will be uncertain at the creation of the estates, and that they will only be ascertained by subsequent events.^{73a} The section does not prohibit any number of concurrent life estates in undivided shares. Each share is considered by itself and there may be two successive life estates in each. After two life estates in each share no more may be had.

The remainder vests in possession in the same manner as though no other life estate had been created. This acceleration can only be made when the remainder is vested. If the remainder be contingent when the two life estates end it cannot be accelerated. In *Purdy v. Hayt* it was held to be void. Likewise the life estate subsequent to those of the two persons first entitled was void, even though the ultimate remainder could not be accelerated because contingent.

These rules have no relation to the general rule against suspension of the power of alienation.⁷⁴ Successive life estates to persons not in being are prohibited although they could not continue inalienable beyond the period allowed by the general rule. More than two life estates to persons in being are forbidden although they are alienable from the start. Neither has it any relation to remoteness of vesting. Successive life estates to persons not in being are forbidden although they could not continue contingent beyond the period allowed. More than two

^{73a}But see *Dana v. Murray*, (1890) 122 N.Y. 604, 29 N.E. 21.

⁷⁴*Purdy v. Hayt*, (1883) 92 N.Y. 446, 451.

life estates to persons in being are forbidden although they are both vested and alienable from their creation. Neither is the provision for acceleration of the remainder in aid of alienability or vesting. Only those remainders which are vested, and so alienable, are accelerated.⁷⁵ In *Graham v. Graham* every interest created was alienable and vested from the start;⁷⁶ in *Purdy v. Hayt* every interest would be alienable and vested on the death of C, so that the absolute power of alienation was suspended for only one life in being. These prudent wills, framed in the first case to provide for unmarried daughters, were partly frustrated, although they were quite unobjectionable to public policy.

"No remainder shall be created upon an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder is in fee."⁷⁷

"When a remainder is created upon any such life estate, and more than two persons are named as the persons during whose lives the estate shall continue, the remainder shall take effect upon the death of the two persons first named, in the same manner as if no other lives had been introduced."⁷⁸

These sections restrict the creation of estates *pur autre vie*. They forbid a remainder for life after any estate *pur autre vie*. A remainder in fee is sanctioned after such an estate. When the estate *pur autre vie* is for more than two lives a vested remainder is accelerated by striking out all names after the first two. A contingent remainder cannot be accelerated. These restrictions are neither of the period of suspension nor of the period of contingency.⁷⁹ They require vesting in possession on the termination of two lives.

"A contingent remainder shall not be created on a term of years, unless the nature of the contingency upon which it is limited is such that the remainder must vest in interest during the

⁷⁵"Having restricted to two the lives in being during which the absolute power of alienation may be suspended, the object of the revisors by these further statutes was, by an accompanying but distinct rule, to prevent estates of any kind from being projected into the future farther than the period of two successive lives of persons in being when the estates are created." 2 Reeves, *Real Property*, 1271, note (a).

⁷⁶Cross remainders between life tenants are vested. Tiffany, *Real Property*, 2nd Ed., sec. 143.

⁷⁷Minn., G.S. 1913, sec. 6668.

⁷⁸Minn., G.S. 1913, sec. 6669.

⁷⁹Fowler, *Real Property*, 3rd Ed., 323, 328.

continuance of not more than two lives in being at the creation of such remainder, or upon the termination thereof."⁸⁰

This rule is clearly one against remoteness of vesting. The remainder is required to *vest in interest* during the continuance of not more than two lives in being at its creation. That an absolute fee in possession could be conveyed will not save it. For example, to A for ten years, remainder to such of his children (unborn) as are living at the end of the ten year period. The remainder would be void. This remainder would be alienable at the latest when A died. All his children must then be in being and ascertained and they could jointly release their possibilities, thereby certainly including those who will be surviving at the end of the ten year period. It does not suspend the power of alienation beyond one life. But A might have children and die within the ten years. The remainder would still continue contingent on their surviving the ten year period. The period is not measured by lives in being and so the remainder is void under this rule.⁸¹ It is enough that the remainder vest in interest; it need not vest in possession within two lives.⁸²

"No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate."⁸³

This section adds a further restriction. A remainder *for life* after a term of years must (except for some collateral contingency) be vested in interest at its creation. To A for ten years, remainder to B for life. The remainder is valid. But to A for ten years, remainder to his first son (unborn) for life; the remainder would vest immediately the child was born, that is, within a life in being, yet it is void under this rule.⁸⁴

(b) By the Creation of Future Interests in Chattels Real Which are Not in Trust

"All the provisions in this chapter contained relative to future estates shall be construed to apply to limitations of chattels real as well as freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the

⁸⁰Minn., G.S. 1913, sec. 6670.

⁸¹Fowler, Real Property, 3rd Ed., 332.

⁸²Wilber v. Wilber, (1901) 165 N.Y. 451, 59 N.E. 264.

⁸³Minn., G.S. 1913, sec. 6671.

⁸⁴Fowler, Real Property, 3rd Ed., 333.

absolute power of alienation can be suspended in respect to a fee."⁸⁵

" . . . nor shall any remainder be created upon such estate [for the life of another person] in a term for years, unless it is for the whole residue of the term."⁸⁶

These provisions apply to existing terms of years, for example, a leasehold of two hundred years. At common law there was doubt whether a remainder could be limited after a life estate in a chattel real.⁸⁷ This doubt is removed by another section. An estate for life may be created in a term of years and a remainder limited thereon.⁸⁸ This permission, however, is qualified by these sections. All the provisions in the chapter are construed to apply to limitations of chattels real. That is to say, that all the rules already dealt with apply to these limitations including the rule that after the estate for the life of another in a term of years a remainder must be for the whole residue of the term.⁸⁹ There is also the additional rule that the *absolute ownership* of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee. This can mean nothing less than that the remainder in the term of years must *vest in possession*, within two lives in being at its creation except that there may be a further suspension of absolute ownership during the minority of the first remainderman.

(c) By the Creation of Future Interests in Chattels Personal
Which are Not in Trust

Future interests may be created in chattels personal today as freely as in real property.⁹⁰ Interests may be given to begin in futuro or to take effect in derogation of another interest limited at the same time. Suppose a picture be bequeathed to A for life, remainder to his eldest son for life, remainder to the son's eldest son for life, and so forever. Or to A and if A's issue ever fails then to B. Is there any rule restricting the creation of such interests? The common law rule against perpetuities

⁸⁵Minn., G.S. 1913, sec. 6673.

⁸⁶Minn., G.S. 1913, sec. 6668.

⁸⁷Tiffany, *Real Property*, 2nd Ed., 584.

⁸⁸Minn., G.S. 1913, sec. 6674.

⁸⁹Fowler, *Real Property*, 3rd Ed., 326.

⁹⁰Gray, *Perpetuities*, 3rd Ed., App. F.; 14 Harv. L. Rev. 397; *State ex rel. Tozer v. Probate Court*, (1907) 102 Minn. 268; 113 N.W. 888; *Innes v. Potter*, (1915) 130 Minn. 320, 153 N.W. 604.

applies equally to interests in real property, chattels real and chattels personal whether the interest be legal or equitable. But the common law rule is probably repealed for all purposes in this state.⁹¹ The statutes provide rules for personal property in trust,⁹² but are silent as to personal property at law. It is uncertain whether they would be restricted as at common law, or on analogy to the statutes regarding realty, or be allowed without any restriction at all.

Summary.—These several rules include as to real property (1) a rule against suspension of *the absolute power of alienation*, (2) an exception which looks like a requirement of *vesting in interest*, (3) rules restricting the number of life estates that may be created and requiring that remainders after two or more life estates *vest in possession* within two lives, (4) a rule restricting the number of lives that may be made the measure of an estate *pur autre vie* and requiring that remainders thereon *vest in possession* within two lives, (5) a rule requiring that contingent remainders after a term of years *vest in interest* within two lives, (6) a rule requiring that a remainder for life after a term for years be *vested at its creation*; as to chattels real all these rules and (7) a rule requiring *absolute ownership* of the term within two lives; as to chattels personal (8) probably no restriction at all.

This multiplicity of rules arrests attention. The common law has found one rule adequate for all purposes. If there be a rational policy to which these rules conform it remains to be discovered. Sections 6667-6671, and section 6673 are arbitrary. They needlessly defeat testators' wishes. They serve no public policy. They could be eliminated with no other than beneficial results.

All these rules should be replaced by the single rule applicable to all classes of property, that any limitation which might remain contingent beyond the period allowed is void.

⁹¹Y.M.C.A. v. Horn, (1913) 120 Minn. 404, 139 N.W. 404; Cf. In Re Tower's Estate, (1892) 49 Minn. 371, 52 N.W. 27. It is repealed as to personal chattels by implication of the statutes relating to real property in Wisconsin, Becker v. Chester, (1902) 115 Wis. 90, 91 N.W. 87, 650, but not in Michigan, Palms v. Palms, (1888) 68 Mich. 355, 36 N.W. 419. New York has a legislative rule as to personalty.

⁹²Minn., G.S. 1913, sec. 6710(5) (6). See Y.M.C.A. v. Horn, (1913) 120 Minn. 404, 139 N.W. 404. In the matter of Bell, (1920) 147 Minn. 62, 179 N.W. 650. Trusts will be dealt with in a later article.

The period should be lives in being and twenty-one years, which is the period in the great majority of states and for certain trusts in Minnesota; or lives in being and minorities of persons in being at the termination of lives in being at the creation of the limitation; or lives in being *or* twenty-one years. The first is preferable.

Rules restricting the creation of trusts will next be discussed.

(To be continued.)